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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ANTHONY ARRON ALLEN,

on Habeas Corpus.

G052763

(Super. Ct. No. 13CF0994)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to file a late notice of appeal. Petition granted.

Appellate Defenders, Inc., and Patricia Ihara for Petitioner.

No appearance for Respondent Court.

Kamala D. Harris, Attorney General, and Julie L. Garland, Assistant Attorney General for Respondent.

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THE COURT:^{*}

Petitioner Anthony Arron Allen seeks relief from the failure to file a timely notice of appeal. The petition is granted.

A jury found petitioner guilty of one count of making criminal threats and two counts of robbery. Personal use of a deadly weapon, a strike prior, and three prison prior allegations were found to be true. On June 5, 2015, the trial court sentenced petitioner to nine years in state prison.

At his sentencing hearing, petitioner was advised of his right to appeal. Petitioner's trial counsel, Gilbert P. Carreon told him that he would file a notice of appeal on his behalf. On July 10, 2015, there were sentencing matters to take care of regarding petitioner's case, and trial counsel mistakenly understood that the date of sentencing was thus July 10, 2015, rather than June 5, 2015. Trial counsel then mistakenly sent petitioner's Notice of Appeal for filing to the Orange County Superior Court on August 20, 2015, believing it was timely. The court received the Notice of Appeal August 21, 2015. In a letter dated the same day, the court advised trial counsel that petitioner's Notice of Appeal was untimely filed and that the latest date to file the Notice of Appeal was August 4, 2015.

The Attorney General does not oppose petitioner's request for relief to file the notice of appeal. (*People v. Romero* (1994) 8 Cal.4th 728, 739-740, fn. 7.)

The principle of constructive filing of the notice of appeal should be applied in situations where a criminal defendant requests trial counsel to file a notice of appeal on his behalf and counsel fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) This is because a trial attorney who has been asked to file a notice of appeal on behalf of a client has a duty to file a proper notice of appeal, or tell the client how to file it himself. In this case, trial counsel told petitioner he would file a

^{*} Before O'Leary, P.J., Bedsworth J., and Thompson, J.

notice of appeal on his behalf. His reasonable reliance on the promise of trial counsel to file a timely notice of appeal entitles him to the relief requested.

The petition is granted. On Allen's behalf, Attorney Patricia Ihara is directed to prepare and file a notice of appeal from the court's order entered on June 5, 2015. In Orange County Superior Court case No. 13CF0994, the clerk of the superior court is directed to accept the notice for filing if presented within 30 days of this opinion becoming final. Further proceedings, including the preparation of the record on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.